Per G.S. Singhvi CJ

Heard Mr. S. Lakshma Reddy, learned counsel for the petitioner, and Mr. P. Vinod Kumar, Government Pleader for Municipal Administration.

This is a petition for quashing the action of Warangal Municipal Corporation (for short 'the Corporation') to cancel the assessment of their property vide order dated 4-10-1994 and to restrain them from demolishing their house.

In the affidavit filed by petitioner No.2, Smt.Kannoj Suseela, it has been averred that the mother of petitioner No.1 had purchased 413 sq. yds. of land from Thakur Bhansingh vide agreement dated 2-3-1959. Thereafter, parents of petitioner No.1 constructed house bearing No.7-1-33/1 with municipal assessment No.7/22-2-A. In 1964 father of petitioner No.1 purchased another piece of land measuring 445 sq.yds. by registered sale deed and raised construction over it. The husband of petitioner No.3 late Mr. V. Thirupati purchased 130 sq. yds. of land from Thakur Bhansingh vide registered sale deed dated
12-09-1967 and raised construction over it. His property was assigned Municipal Assessment No.7/17-A-2. Petitioner No.2 further averred that without issuing any notice and without giving them opportunity of hearing, Commissioner of the Corporation vide common proceedings Roc. No.G4/230/94 dated 04-10-1994 cancelled the municipal assessment of their properties and officers and officials of the Corporation started demolishing the same.

Sri A. Lakshma Reddy, learned counsel for the petitioners argued that the cancellation of the municipal assessment is liable to be declared as nullity because order dated 4-10-1994 was not preceded by notice and opportunity of hearing. Learned counsel submitted that the cancellation of municipal assessment adversely affected right of the petitioners in respect of the property in question and they could not have been deprived of that right without being heard.

Learned Government Pleader for Municipal Administration says that he is not in a position to defend order dated 4-10-1994 passed by Commissioner of the Corporation because written statement has not been filed on behalf of the respondents.

I have given serious thought to the entire matter. Since the respondents have not filed reply to controvert the averments contained in the affidavit of petitioner No.2, the writ petition is liable to be decided on the premise that action taken by the Commissioner of the Corporation for cancellation of municipal assessment of the properties of the petitioners was not preceded by notice and opportunity of hearing to the affected persons and order dated 4-10-1994 is vitiated due to violation of the basic rule of natural justice i.e., no one should be condemned unheard.

The applicability of the rule of hearing in purely administrative matters has been fully recognized by the Supreme Court in **State of Orissa v. Dr. (Miss) Binapani Dei and others, Sayeedur Rehman v. State of Bihar, Maneka Gandhi v. Union of India, S.L. Kapoor v. Jagmohan** and **Swadeshi Cotton Mills v. Union of India.**

In **Dr.Binapani Dei** (1 supra) the Supreme Court was called upon to consider the correctness of the view expressed by the Orissa High Court that the respondent could not have been retired from service on the basis of an alteration made in her date of birth recorded in her service book without giving her notice and opportunity of hearing. While affirming the judgment of the Orissa High Court, the Supreme Court laid down the following propositions:

> "9. … An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom in enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the

essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

12. … It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. …"

In **Sayeedur Rehman** (2 supra) the Supreme Court considered the question whether an order passed by the school management for grant of monetary benefits to the appellant could be withdrawn without giving him notice and opportunity of hearing and held:

"7. … This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties. … The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering an order is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties."

In **Maneka Gandhi v. Union of India** (3 supra) the Constitution Bench of the Supreme Court highlighted the importance of the rules of natural justice in the following words:

"Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice. (para 57)

Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be: does fairness in action, demand that an opportunity to be heard should be given to the person effected? (para 58)

> The law must now be taken to be well-settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable. (para 61)"

By applying the ratio of the above noted judgments to the facts of this case, we hold that the action of Commissioner of the Corporation to cancel the municipal assessment of the properties of the petitioner is nullity. The consequential action taken by the officers of the Corporation to partially demolish the properties of the petitioners is also declared illegal.

In the result, the writ petition is allowed. The order dated 04-10-1994 is declared illegal and quashed with liberty to the petitioners to avail appropriate legal remedy for award of compensation in lieu of the illegal demolition of their properties. The parties are left to bear their own costs.

G.S. SINGHVI, C.J.

Date:16-12-2005

PV / svs

HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.3532 OF 1995

Between:

Basaboina Sundar, S/o. Kommaiah,

aged 47 years, H.No.7-1-33/1, Sainagar,

Balasamudram, Hanumakonda Mandal,

Warangal District & 3 others

.. Petitioners

AND

The Commissioner/Special Officer,

Warangal Municipal Corporation,

Warangal & another

.. Respondents

::ORDER::

Counsel for the petitioner : Mr. S. Lakshma Reddy
Counsel for the Respondents : G.P. for Municipal Admn.

16th December, 2005